

SERVICE DATE - LATE RELEASE FEBRUARY 8, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42068

CAPITOL MATERIALS INCORPORATED—PETITION FOR  
DECLARATORY ORDER—CERTAIN RATES AND PRACTICES OF  
NORFOLK SOUTHERN RAILWAY COMPANY

Decided: February 8, 2002

By petition filed on October 12, 2001, Capitol Materials Incorporated (Capitol) seeks a declaratory order to resolve a dispute over demurrage charges assessed by Norfolk Southern Railway Company (NS) for shipments of wallboard received at Capitol's facilities in Atlanta and Duluth, GA.<sup>1</sup> In a decision served on January 16, 2002, the Board instituted a proceeding to resolve the controversy and adopted a procedural schedule pursuant to the modified procedure rules at 49 CFR part 1112. Under the schedule, Capitol's opening statement is due by February 15, 2002, NS's reply statement is due by April 1, 2002, and Capitol's rebuttal statement is due by May 1, 2002.

On January 31, 2002, Capitol filed a request seeking a revision of the procedural schedule to provide a 90-day period for discovery, and a corresponding extension of the statement due dates following the close of discovery. Capitol submits that a revised schedule allowing for a limited discovery period is warranted because the issues involved in the proceeding are complex.

In a reply filed February 7, 2002, NS objects to any extension of the schedule. NS argues that, contrary to Capitol's assertion, the issues in this proceeding are not complex and there is no reason to believe that the Board's discovery rules and established time frames are inadequate to deal with those issues, at least not if Capitol had utilized them in a diligent and timely fashion. On the contrary, NS states that Capitol served its first, and so far only, discovery request in this proceeding on February 4, 2002, nearly 4 months after filing its petition and less than 2 weeks before the deadline for its initial submission. Moreover, NS argues that the four numbered document requests largely replicate document requests Capitol made in October 2000 in the

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<sup>1</sup> This matter is on referral from the Superior Court of Fulton County, Atlanta Judicial Circuit in Norfolk Southern Railway Company v. Capitol Materials, Inc., Civil Action File No. 2000CV25039.

underlying court case.<sup>2</sup> NS submits that, after it responded to Capitol's discovery requests in the court proceeding, Capitol asked the court to suspend any further discovery by NS against Capitol in that case pending resolution of Capitol's motion to refer various issues to the Board.

In light of NS's strong opposition to the extension request<sup>3</sup> and the fact that Capitol has apparently already obtained substantial discovery from NS in the underlying court proceeding, an additional 90-day period to complete discovery has not been justified. Rather, a short extension to allow NS time to respond to Capitol's pending discovery request should be sufficient and will not unduly delay the proceeding. Under the circumstances, a 20-day period to complete discovery is reasonable and will be granted. The revised procedural schedule is set forth below.

It is ordered:

1. The procedural schedule for this proceeding is revised as follows:

February 28, 2002	End of discovery period.
April 1, 2002	Opening statement due.
May 16, 2002	Reply statement due.
June 17, 2002	Rebuttal statement due.

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<sup>2</sup> To illustrate, NS states that: Request No. 1, seeking all documents establishing each switching date and time of every rail car tendered to Capitol at its Atlanta and Duluth facilities during the subject period, is similar to a request Capitol made in the underlying court proceeding on October 12, 2000, for all documents reflecting "each switching date and time of every Railcar tendered to Defendant during the Period;" and Request No. 2, seeking all bills of lading or other documents which identify the origin date of every car spotted at Capitol's Atlanta and Duluth facilities during the period, duplicates another request Capitol made on October 12, 2000, for "any document, whether bill of lading or otherwise, reflecting the date and origin of each Railcar delivered to Defendant at the Atlanta Facility and Duluth Facility during the Period." NS submits that, in response, it provided waybills containing the requested information in late 2000 and early 2001, as well as summaries of the same. NS asserts that these summaries are responsive to Capitol's Request No. 4, which demands all documents evidencing or showing a complete listing or logs of all cars delivered to Capitol's Atlanta and Duluth facilities during the subject period.

<sup>3</sup> NS states that granting such an extension would serve to unduly delay its efforts to collect unpaid demurrage.

2. This decision is effective on the date served.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary